

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
WSYX LICENSEE, INC.	)	FCC File Nos. 0000054782, 0000054786
	)	
Request for Renewal and Reinstatement of	)	
License for Private Operational Fixed Microwave	)	
Service Stations WNES558 and WNES559	)	

**ORDER**

**Adopted:** September 20, 20000

**Released:** September 22, 2000

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. We have before us a request by WSYX Licensee, Inc. (WSYX) for renewal and reinstatement of its licenses for Fixed Microwave Service (FMS) Stations WNES558, Columbus, Ohio, and WNES559, Columbus, Ohio.<sup>1</sup> In conjunction with the applications, WSYX submitted a request for waiver of Section 1.949 of the Commission's Rules to allow submission of its renewal applications after the licenses expired.<sup>2</sup> For the reasons set forth below, we deny the waiver request and dismiss the above-captioned applications.

**II. BACKGROUND**

2. The licenses for Stations WNES558 and WNES559 expired on September 27, 1999. WSYX, which operates a television broadcast station, states that it did not receive renewal notices from the Commission because it had recently changed its corporate address, and all of its mail had not been forwarded.<sup>3</sup> It also states that it did not realize that its FMS stations, unlike its broadcast auxiliary stations, require separate renewal application filings.<sup>4</sup>

3. WSYX initially submitted renewal applications for both stations to the Commission's lockbox agent, Mellon Bank (Mellon), on October 27, 1999, thirty days after the licenses expired.<sup>5</sup>

<sup>1</sup> See FCC File Nos. 0000054782, 0000054786 (filed Nov. 5, 1999).

<sup>2</sup> WSYX Request for Waiver of Application for Renewal of License Filing Due Date (filed Oct. 27, 1999).

<sup>3</sup> *Id.* at 1.

<sup>4</sup> *Id.*

<sup>5</sup> See Letter from Kathryn R. Schmeltzer, Fisher Wayland Cooper Leader & Zaragoza L.L.P., counsel for WSYX Licensee, Inc., to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division (dated Oct. 27, 1999). This application included a request for a waiver of Section 101.65 of (continued....)

Mellon returned the applications to WSYX because they contained an incorrect fee type code.<sup>6</sup> WSYX's resubmitted a corrected application on November 5, 1999, thirty-eight days late, which was accepted for filing.<sup>7</sup>

### III. DISCUSSION

4. Last year, the Commission adopted a new policy regarding treatment of late-filed renewal applications in the wireless services.<sup>8</sup> Renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under our rules, but the licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.<sup>9</sup> Applicants who file renewal applications more than thirty days after the license expiration date may also request that the license be renewed *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.<sup>10</sup> In determining whether to grant a late-filed application, we take into consideration all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee.<sup>11</sup> Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission, we conclude that WSYX's late-filed renewal applications should be dismissed.

5. We find that the fact that WSYX did not receive its FCC computer-generated renewal forms because all of its mail had not been forwarded after the company changed its corporate address does not excuse the late filing, because it is the duty of the licensee to update its address with the Commission. Section 1.5 of our Rules explains that "[e]ach licensee shall furnish the Commission with an address to be used by the Commission in serving documents or directing correspondence to that licensee. Unless any licensee advises the Commission to the contrary, the address contained in the

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the Commission's Rules to allow submission of the renewal application thirty days beyond the expiration date of the license. See 47 C.F.R. § 101.65 (1998).

<sup>6</sup> Specifically, the applications were addressed to the lockbox that accepts, *inter alia*, microwave renewal applications, lockbox 358245. See 47 C.F.R. § 1.1102(14). The applications included waiver requests, so WSYX used fee type code PDWM, the code for the waiver fees. See *id.* Fees bearing code PDWM, however, must be submitted to lockbox 358130, the lockbox for, *inter alia*, microwave waiver requests, and are not accepted at lockbox 358245. See *id.*

<sup>7</sup> See *Public Notice*, Report No. 401 (rel. Dec. 15, 1999).

<sup>8</sup> See Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, and 101 of the Commission's Rules to Facilitate Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476 (1999).

<sup>9</sup> *Id.* at 11485 ¶ 22.

<sup>10</sup> *Id.* at 11486 ¶ 22.

<sup>11</sup> *Id.* at 11485 ¶ 22.

licensee's most recent application will be used by the Commission for this purpose."<sup>12</sup> Furthermore, "[t]he licensee is responsible for making any arrangements which may be necessary in his particular circumstances to assure that Commission documents or correspondence delivered to this address will promptly reach him, or some person authorized by him to act in his behalf."<sup>13</sup> Given that WSYX was solely responsible for notifying the Commission of any address changes, we believe that WSYX was directly responsible for its failure to receive its renewal forms in a timely manner.<sup>14</sup> Furthermore, regardless of why the renewal notices were not received, each licensee is responsible for knowing the expiration date of its licenses.<sup>15</sup> Accordingly, "failure of a licensee to receive a [renewal form] from the Commission is no excuse for failure to file a renewal application."<sup>16</sup>

6. Further, we are not persuaded by WSYX's claim that it did not realize that FMS stations, unlike its broadcast auxiliary stations, require separate renewal application filings.<sup>17</sup> Pursuant to the Commission's Rules, "[p]ersons having business with the Commission should familiarize themselves with those portions of its rules and regulations pertinent to such business."<sup>18</sup> Similarly, the fact that part of the delay was caused by WSYX using the wrong lockbox is not a sufficient basis for excusing the late filing.<sup>19</sup> The Rules set forth which lockbox to use and WSYX failed to follow these instructions.<sup>20</sup>

7. Therefore, because none of WSYX's aforementioned reasons excuses the late filing, we deny WSYX's waiver request for acceptance of its late-filed renewal applications for Stations WNES558 and WNES559. Therefore, in light of the denial of WSYX's waiver request, WSYX's renewal applications are late-filed.<sup>21</sup> Accordingly, WSYX's renewal applications must be dismissed as untimely.<sup>22</sup> If WSYX wishes to obtain a valid authorization for these stations, it must file new, properly

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<sup>12</sup> 47 C.F.R. § 1.5(a).

<sup>13</sup> 47 C.F.R. § 1.5(b).

<sup>14</sup> See PDB Corporation, State College for Construction Permit for a New FM Commercial FM Station, For Reinstatement of Expired Construction Permit, WUMI (FM), State College, Mississippi, *Memorandum Opinion and Order*, 11 FCC Rcd 6198, 6170 ¶ 7 (May 16, 1996).

<sup>15</sup> Tampa Electric Company, *Order*, 14 FCC Rcd 21344, 21348 ¶ 9 (WTB PSPWD 1999) (Tampa Electric) (citing Daniel R. Goodman, Dr. Robert Chan, Petition for Waiver of Section 90.633(c) and 1.1102 of the Commission's Rules, *Memorandum Opinion Order on Reconsideration*, 13 FCC Rcd 21944, 21972-73 ¶ 53 (1998) (Goodman).

<sup>16</sup> Tampa Electric, 14 FCC Rcd at 21349 ¶ 9 (citing Goodman 13 FCC Rcd at 21973 ¶ 53; *accord e.g.*, Nevada Power Company, *Order on Reconsideration*, 14 FCC Rcd 17812, 17814 ¶ 5 (WTB PSPWD 1999)).

<sup>17</sup> Waiver Request.

<sup>18</sup> 47 C.F.R. § 0.406.

<sup>19</sup> See WLOS Licensee, Inc., *Order on Reconsideration*, 15 FCC Rcd 11047, 11049 ¶ 5 (WTB PSPWD 2000) (denying late-filed application initially submitted twenty-eight days after license expired but with wrong fee amount, then filed correctly forty-nine days after license expired).

<sup>20</sup> See 47 C.F.R. § 1.1102(14); *see also* Wireless Telecommunications Bureau Fee Filing Guide pp. 8-9 (effective Sept. 13, 1999).

<sup>21</sup> 47 C.F.R. § 1.949(a).

<sup>22</sup> *Id.*

coordinated FMS applications.<sup>23</sup> If WSYX desires to continue operating these facilities until it receives new authorizations, it must obtain authorization to do so.<sup>24</sup>

#### IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Section 1.949 of the Commission's Rules, 47 C.F.R. § 1.949, the request for waiver of Section 1.949 filed by WSYX Licensee, Inc. on November 5, 1999, IS DENIED.

9. IT IS FURTHER ORDERED that the applications to renew the licenses for Stations WNES558, Columbus, Ohio (FCC File No. 0000054786); and WNES559, Columbus, Ohio (FCC File No. 0000054782) filed by WSYX Licensee, Inc. on November 5, 1999, ARE DISMISSED.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau

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<sup>23</sup> See 47 C.F.R. § 101.103.

<sup>24</sup> See 47 C.F.R. § 1.931.